

UNIVERSAL HUMAN RIGHTS

I. HUMAN RIGHTS DEFINED

Human Rights are those rights which are recognized as belonging to all human beings, regardless of political, ethnic, cultural, religious, or other distinctions. Although there are a number of definitions, a popular definition put forth by former United States Secretary of State Cyrus Vance divides the concept of Human Rights into three categories:

- A. The right to be free from government violation of the integrity of the person, including:
 - 1. torture;
 - 2. cruel, inhuman, or degrading treatment or punishment;
 - 3. arbitrary arrest or imprisonment;
 - 4. denial of fair public trial; and
 - 5. invasions of home.
- B. The right to the fulfillment of such vital needs as food, shelter, health care and education.
- C. The right to enjoy civil and political liberties such as:
 - 1. freedom of thought, of religion, and of assembly;
 - 2. freedom of speech;
 - 3. freedom of the press;
 - 4. freedom of movement both within and outside of one's own country; and
 - 5. freedom to take part in one's government.

II. CONCEPT AND HISTORY

The international human rights movement is based on the concept that all nations have an obligation to respect the human rights of its citizens and that other nations and the international community have the right and responsibility to protest if states do not adhere to this obligation. International human rights law consists of the body of international rules, procedures and institutions developed to implement this concept and to promote respect for

human rights in all countries on a worldwide basis.

- A. Concern for the dignity of the individual can be traced to the philosophies of ancient Athens and Rome and in the teachings of the world's great religions. The more modern Western democratic view of individual rights can be traced to the signing of the Magna Carta and the English, French and American Revolutions.
- B. Throughout most of human history the way one government treated its own citizens was considered solely its own business and not a concern of other nations. Before World War I, only nation-states had rights under international law. Therefore, from an international legal standpoint, human rights questions were regarded as matters entirely within each state's own domestic jurisdiction and not appropriate for regulation by international law. There were some exceptions:
 - 1. Humanitarian intervention.
 - 2. Human rights treaties between states.

Examples: Treaty of Paris and Treaty of Berlin (regarding protection of Christian minorities in the Turkish Empire).
 - 3. Hague and Geneva Conventions regarding the Law of War, and treatment of prisoners, wounded and sick.
 - 4. The League of Nations (1920) -- no provisions for human rights, but established a mandate system . . . agreement to administer according to "the principle that the well-being and development of [the indigenous] peoples form a sacred trust of civilization." It also established international labor standards and helped develop systems for the protection of minorities.
- C. After World War II (WWII), there was worldwide horror in reaction to Nazi and Japanese violations of human rights.
 - 1. United States President Franklin Roosevelt's "Four Freedoms" speech made at the beginning of WWII defined human rights as four essential freedoms that were worth fighting for and protecting: freedom of speech/expression, freedom of religion, freedom from want, and freedom from fear. This speech inspired the United States war effort and the later founding of the United Nations.
 - 2. The international military tribunals at Nuremberg and Tokyo prosecuted individuals for "Crimes Against Humanity," which were defined as mass atrocities committed by, or with the approval of, the government, and included crimes against racial or religious groups of its own inhabitants. Although crimes were committed with government approval or even by government direction, individuals were held responsible in their individual

capacities.

III. THE UNITED NATIONS HUMAN RIGHTS SYSTEM

- A. The UN Charter upholds the concept of state sovereignty and non-intervention by other states:
 - 1. Article 2(1): "The organization [of the United Nations] is based on the principle of the sovereign equality of all its Members."
 - 2. Article 2(7): "Nothing contained in the present Charter shall authorize the United Nations to intervene in matters which are essentially within the domestic jurisdiction of any state...[except for application of] enforcement measures under Chapter VII."
- B. Member States must now work with the UN to promote universal respect for human rights.
 - 1. Article 55: The United Nations promises to promote, among other things, "universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion."
 - 2. Article 56: "All Members pledge themselves to take joint and separate action in co-operation with the Organization for the achievement of the purposes set forth in Article 55."
- C. Humanitarian intervention should be coordinated through the UN authority.
 - 1. Article 13(1) obliges the General Assembly to initiate studies and make recommendations to "assist in the realization of human rights and fundamental freedoms"
 - 2. Article 42 (Chapter VII): "Should the Security Council consider that [measures not involving force] would be inadequate or prove to be inadequate, it may take such action by air, sea, or land forces as may be necessary to maintain or restore international peace and security."
- D. Beyond the Charter, the UN's concern and involvement in human rights has expanded dramatically since 1945. Numerous instruments have been adopted including:
 - 1. Universal Declaration of Human Rights (1948)
 - 2. Genocide Convention (1948)
 - 3. Convention on the Political Rights of Women (1952)

4. Standard Minimum Rules for the Treatment of Prisoners (1957)
 5. Convention on the Elimination of All Forms of Racial Discrimination (1965)
 6. International Covenant on Civil and Political Rights (1966)
 7. International Covenant on Economic, Social and Cultural Rights (1966)
 8. Protocol on Status of Refugees (1967)
 9. Convention on the Elimination of All Forms of Discrimination Against Women (1979)
 10. Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (1984)
 11. Convention on the Rights of the Child (1989)
 12. Convention on Migrant Workers (1990)
- E. Consequences of UN Charter and UN Human Rights Efforts.
1. Member States now recognize that human rights are an international concern. This means that one nation's treatment of its own citizens is a legitimate concern of other nations.
 2. By agreeing in the UN Charter to cooperate in promoting human rights the Member States have given the United Nations the legal authority to define and legislate those rights.
 3. UN practice over the years has clarified the scope of the obligations of member states to promote human rights, both expanding them and creating organizations designed to ensure member compliance
 - a. Nations engaging in a pattern of gross violations of international human rights are in violation of the UN Charter because they have failed to uphold their pledge to promote universal respect for and observance of human rights.
 - b. UN investigations reveal human rights abuses and UN resolutions call on specific states to cease violating the Charter.

IV. THE INTERNATIONAL BILL OF HUMAN RIGHTS

- A. The so-called "International Bill of Human Rights" consists of the international

instruments listed above, but rest primarily on:

1. Human rights provisions of the UN Charter;
2. Universal Declaration of Human Rights;
3. International Covenants on Civil and Political Rights;
4. International Covenant on Social, Economic and Cultural Rights; and
5. Optional Protocol to the Covenant on Civil and Political Rights.

B. The Universal Declaration of Human Rights (1948).

1. The Universal Declaration of Human Rights was adopted by the United Nations General Assembly on 10 December 1948.
2. The purpose of the Declaration is to provide a "common understanding" of human rights and fundamental freedoms covered by the United Nations Charter and to serve "as a common standard of achievement for all peoples and all nations..." (Preamble).
 - a. It sets forth the basic civil, economic, political, and social rights and freedoms of every person.
 - b. It declares "all human beings are born free and equal in dignity and rights" and "everyone is entitled to a social and international order in which the rights and freedoms set forth in this Declaration can be fully realized."
 - c. Article 2 prohibits discrimination based on sex, skin color, religion, political opinion, or nationality.
3. The Declaration is not a treaty, but a resolution adopted by the General Assembly. Therefore, it originally did not have the force of law. Since its enactment in 1948, however, some parts of it have evolved into internationally recognized law and thereby creates legal obligations on all nations. Nations disagree on which provisions have become customary international law. Many nations have incorporated the Universal Declaration into their own constitutions.
4. According to Article 29, a state may place limitations on the protection of the Universal Declaration of Human Rights, if the purpose of such limitation is:
 - a. to secure "due recognition and respect for the rights and freedoms of

- others and of meeting the just requirements of morality, public order and the general welfare in a democratic society."
- b. so that neither a State, group, nor person has any right "to engage in any activity or to perform any act aimed at the destruction of any of the rights and freedoms" in the Declaration.
- 5. Many of the fundamental human rights spelled out in the Universal Declaration are so widely accepted by most nations that the obligation to promote and observe those rights listed in the Declaration is now seen as binding on all states as a matter of customary international law. This view is further strengthened in that several international human rights treaties, such as the Covenant on Civil and Political Rights, and regional human rights declarations, such as the "Convention for the Protection of Human Rights and Fundamental Freedoms - Council of Europe," have been widely adopted.
 - 6. Rights and Freedoms of the Universal Declaration of Human Rights. There are two categories of rights. They are civil and political rights and economic, social and cultural rights.
 - 7. Civil and political rights include:
 - a. the right to life, liberty, and security of person (Article 3);
 - b. the prohibition of slavery (Article 4);
 - 8. the prohibition of torture, and of cruel, inhuman, or degrading treatment (Article 5);
 - 9. equal protection (Article 7);
 - a. legal recourse (Article 8);
 - b. the right not to be subjected to arbitrary arrest, detention, or exile (Article 9);
 - c. the right to a fair trial in both civil and criminal matters (Article 10);
 - d. the presumption of innocence and the prohibition against the application of *ex post facto* laws and penalties (Article 11);
 - e. the right to privacy and freedom from attacks on honor (Article 12 and 17);
 - f. the right of everyone to leave any country, including his own, and to

return to his country (Article 13);

- g. the right to seek and to enjoy asylum in other countries from persecution (Article 14);
- h. the right to a nationality (Article 15);
- i. freedom of religion (Article 18);
- j. freedom of thought and expression (Article 19);
- k. freedom of assembly (Article 20);
- l. the right to take part in the government of one's country, directly or through freely-chosen representatives (Article 21); and
- m. periodic and genuine elections by universal suffrage (because the will of the people shall be the basis of the authority of government) (Article 21).

10. Social and economic rights include:

- a. the right to marry whomever one chooses (Article 16);
- b. the right to own property (Article 17);
- c. social security (Articles 22 and 25);
- d. choice of employment and labor unions (Article 23);
- e. limited work hours (Article 24);
- f. education (Article 26); and
- g. social and international order (Article 28).

C. International Covenants and Protocol

- 1. The International Covenants on Civil and Political Rights and the International Covenant on Social, Economic, and Cultural Rights, plus the Optional Protocol to the International Covenant on Civil and Political Rights define in more detail the rights set out in the Universal Declaration and they also provide additional rights.
- 2. The Covenants and the Optional Protocol on Civil and Political Rights went into force in 1976. As of August 2002, 148 states have ratified the Civil and

Political Covenant, 145 have ratified the Economic Covenant. The Civil and Political Covenant has two optional protocols which have ratified by 102 and 47 states respectively.

3. Both covenants require signing states to submit periodic reports to the UN on measures adopted to give effect to the covenants.
4. The Optional Protocol to Civil and Political Covenant gives power to the UN to receive and review complaints against countries which have signed the protocol.

D. Regional Human Rights Instruments. There are three regional instruments that specifically address human rights. They are:

1. Organization of American States (American Convention on Human Rights - The Pact of San Jose)
 - a. The Pact was drafted in 1969 and went into effect in 1978.
 - b. The Pact specifically prohibits torture and cruel, inhuman, or degrading treatment or punishment.
2. Organization of African Unity (African Charter on Human and People's Rights)
 - a. The Charter was adopted in 1981 at Nairobi, Kenya.
 - b. While individuals enjoy certain rights under the Charter, they are also obligated to fulfill certain duties toward other individuals, as well as to the state of the citizen.
 - c. Economic, social, and cultural development is a top priority.
3. European Convention for the Protection of Human Rights and Fundamental Freedoms (1953)
 - a. The contracting states assume the obligation to effectively protect the human rights enshrined in the convention and to accept international monitoring in this respect.
 - b. The Convention guarantees a right to life, freedom, and personal safety, as well as the freedom of speech, thought, conscience and religion.

- E. In addition to international agreements, treaties, pacts, and protocols, there are other sources or organizations which effect human rights law.
 - 1. National law - most countries have a constitution and laws that protect individual human, civil, and political rights.
 - 2. Opinions of the International Court of Justice (like the 1971 advisory opinion on the presence of South Africa in Namibia).
 - 3. Security Council Resolutions (like the mandate restrictions on Rhodesia in 1968, South Africa in 1977 and Iraq in 1990).
 - 4. General Assembly Resolutions (like those dealing with human rights issues in Africa, Afghanistan and the Middle East).
 - 5. The UN Commission on Human Rights and its Sub-Commission on Prevention of Discrimination and protection of Minorities, the Human Rights Committee established under the Covenant on Civil and Political Rights and numerous other regional commissions and courts throughout the world.
- F. Law of Armed Conflict (LOAC). While LOAC certainly benefits each human being and offers a measure of protection from abuse in armed conflict situations, Human Rights law is considered distinct from LOAC. This is true although one can argue that the first worldwide legal efforts in human rights came from international agreements on warfare. Those seeking to defend individual rights must be able to draw those distinctions and rely on the appropriate law for each individual situation.

V. WHEN IS A COUNTRY BOUND BY HUMAN RIGHTS LAW?

International law, including human rights law, is primarily applicable to states, not individuals. Consequently, these international rules and treaties generally serve as a source of domestic legal obligation for a state's officials, and of domestic rights for that state's citizens when they are incorporated in some manner into a state's own internal law.

- A. To determine if a treaty is relevant to a particular human rights situation in a particular country one must determine the following:
 - 1. Does the treaty have express language requiring parties to respect the rights at issue?
 - 2. Have the minimum number of countries ratified in order for the treaty to become binding?
 - 3. Did the country in question actually ratify the treaty as opposed to simply signing it?
 - 4. In ratifying the treaty, did the country file any relevant reservations?

- B. In many countries a ratified treaty automatically becomes part of domestic law. In others, there must be specific legislation to incorporate the language or principles of a treaty into domestic law.
- C. Some human rights treaties allow standing for individuals or Non Governmental Organizations (NGOs) to bring complaints directly before international bodies. Examples include Article 25 of the European Convention on Human Rights and the American Convention on Human Rights.
- D. A few treaties impose criminal liability on government officials who violate rights protected by the treaty. Examples include the Genocide Convention and the Convention on the Suppression and Punishment of Crime of Apartheid. Such treaties also create an affirmative obligation on other nations to prevent such crimes and to seek to punish the perpetrators.

VI. METHODS OF ENFORCEMENT OF HUMAN RIGHTS

The international community uses various means to achieve its human rights goals world-wide, but the reality is that an effective system of international human rights law rests primarily on the concept of enforcement by states. While, in theory, a violating state will be called to task by other states, the reality is that states are generally reluctant to antagonize friendly countries by criticizing their human rights behavior and criticism is generally reserved for enemies or politically unpopular states.

- A. Standard means of state enforcement include:
 - 1. Example. Countries are aware that their human rights record may serve as an example for other countries to follow (or not, as the case may be).
 - 2. Diplomacy. Representatives from one country may address human rights concerns to representatives of foreign countries in private meetings.
 - 3. Asylum to Political Refugees: Many countries have immigration laws which allow persons fleeing their homeland because for political reasons to immigrate. As an example, foreign nationals requesting political asylum on a military base *in U.S. territory* or on a U.S. ship on the high seas will not be turned over to another government without approval from senior civilian leadership in the government. Foreign nationals who present themselves at a U.S. installation, aircraft or ship *within the territory of another country* will not be granted asylum. They may, however, be granted temporary refuge if their life or safety is in immediate danger.
 - 4. World opinion. If diplomacy and example do not work, government officials may choose to speak out publicly against a particular country's human rights record, thereby using political pressure for change.

5. Foreign Assistance. Wealthy nations often provide funds for development and economic relief to poorer nations. These funds may be suspended for governments that violate human rights.
 6. Economic sanctions. Individual countries may reduce economic cooperation with a country that continues to violate human rights. For example, the United States has threatened to withdraw "most favored nation" trading status for countries that engage in human rights abuses.
 7. United Nations or Regional Organization Action. The United Nations or other regional organization, such as Organization of American States, will act to put political and economic pressure on countries that commit human rights abuses. The United Nations has formal processes for receiving, investigating and acting on allegations of human rights abuses. Although persuasion is the primary tool, the UN Security Council can vote to impose economic sanctions against offending countries.
- B. Within a specific country the standard approach involves:
1. Formal legal procedures under the national law.
 2. Administrative appeals to national agencies.
 3. Redress to the legislative branch.
 4. Media attention
- C. International Courts. Judgments of the inter-American and European courts of human rights have the power to order compensation to be paid to victims of human rights violations. In theory all members of the Organization of American states and the Council of Europe (except recent members) are bound by those decisions.
- D. Human Rights Investigations. While it may not help a specific individual, awareness of human rights violations may be increased by publishing reports (such as those prepared by Amnesty International), sending fact-finding missions, and publicizing eye-witness accounts.
1. The UN Commission on Human Rights is the most influential worldwide investigator and its reports on various situations have had significant impact. However, getting an investigation underway is extremely difficult given political and practical pressures.
 2. An easier investigation to launch is a "confidential investigation into situations which appear to reveal a consistent pattern of gross violations of human rights." While the results are confidential, the investigation applies pressure by its very existence.

3. Regional organizations like the OAS and OAU can also direct investigations. However, that may be equally politically challenging. (The OAU, since the 1986 Charter, has yet to get Assembly approval to order such an investigation.)
- E. Intervention and Protection by Armed Force.
1. The UN, acting under Chapters VI and VII and regional organizations acting under Chapter VIII, with Security Council approval, can intervene in a conflict situation and stop human rights abuses. Once the situation is determined to be a threat to world peace the UN can intervene and can attempt to rebuild the country with institutions that will ensure the human rights of all citizens.
 2. In the Spring of 1999, the United Nations Security Council was deadlocked over whether the UN should authorize armed intervention to stop the serious human rights abuses occurring in Kosovo. This stalemate led NATO to carry out a bombing campaign, without UN authorization, against Serb military forces in Kosovo and Serbia in an effort to bring an end to the human rights abuses. Many international legal scholars questioned the legality of this action while at the same time saying it was “legitimate” or “necessary.” The legal status of such actions remains unsettled.

VII. CONTINUING PROBLEMS AND PROSPECTS

Despite the explosion of interest and information about Human Rights, the world's track record in this area continues to be dismal in many ways. There are numerous practical and theoretical reasons for this failure, including:

- A. The Fundamental Human Rights Split. With over 180 countries in the UN, the world is clearly a place of diverse cultures, political systems and ideologies which exist in a context of varying economic capabilities and varying willingness to expand the human rights of their citizens.
1. Western, developed countries have tended to emphasize civil and political rights while developing and socialist countries have generally emphasized social and economic rights.
 2. There is also disagreement over whether human rights belong to the individual or are collective and whether they stand alone or must be considered in the entirety of a country's civil, political, economic, social and cultural rights.
- B. Sovereignty and National Interest. Despite international support, countries will

always be reluctant to take foreign policy risks when the alleged abuses do not affect their immediate foreign policy interests. Few countries have declared, as did President Carter in the U.S. in 1976, that human rights considerations would directly affect their foreign policy. Furthermore there is always the political fear that the complainer will soon be the subject of a complaint.

- C. Domestic Realities. Within an individual country it is often difficult to sort out what is organized government abuse and what is the natural result of the relentless pressures of increasing population, resource depletion, environmental degradation and economic scarcity.
- D. Nongovernmental Forces. Since Human Rights requirements are directed at states and governments it is difficult to deal with violations by gangs, bandits, rebels, private militias and even "home" militias. As order and the rule of law disintegrated in several countries in the post-Cold War era, it becomes clear that the present international mechanisms to stop abuse may be inadequate.
- E. Lack of UN Resources and Political Will. Given the mixed success of UN intervention during the 1990's it remains to be seen whether there is adequate political and financial support to enable the UN to mount direct intervention by force to protect human rights within a given country or region.

VIII. CONCLUSION

Media attention has focused worldwide attention on human rights violations, which were formerly regarded as purely internal matters. As a result, methods to achieve internationally accepted standards of conduct for governments have been sought by the international community. The record of enforcement has been uneven. Governments, or individuals acting with the apparent authority of the government, are often perpetrators of human rights violations and take steps to defend themselves from criticism and scrutiny. Further, heightened security threats in the post-September 11 world cause many individuals and governments to shift the balance between individual liberties and security towards increased security. Nonetheless, international emphasis on human rights has growing significance for the world's economy and security as well as the quality of life of all people. Whether the growing interest in human rights will be able to sustain itself in a world of shrinking resources and enormous political pressures and change is the challenge of the future.